

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs October 1, 2002

STATE OF TENNESSEE v. DANNY RAY HOLLIDAY

**Appeal from the Circuit Court for Madison County
No. 00-970 Donald H. Allen, Judge**

No. W2002-00019-CCA-R3-CD - Filed December 30, 2002

Danny Ray Holliday appeals from his Madison County Criminal Court convictions of assault and unlawful carrying or possession of a weapon with the intent to employ it in the commission of an offense. *See* Tenn. Code Ann. §§ 39-13-101 (1997) (assault); 39-17-1307 (1997) (unlawful carrying or possession). He seeks relief on claims that the jury reached inconsistent verdicts and that the evidence does not sufficiently support his convictions. Because we are unconvinced of any infirmity in his convictions, we affirm.

Tenn. R. App. P. 3; Judgment of the Circuit Court is Affirmed.

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which DAVID H. WELLES and ALAN E. GLENN, JJ., joined.

Clifford K. McGown, Jr., Waverly, Tennessee, and George Morton Googe and Jeffrey Mueller, Jackson, Tennessee, for the Appellant, Danny Ray Holliday.

Paul G. Summers, Attorney General & Reporter; Thomas E. Williams, III, Assistant Attorney General; James G. Woodall, District Attorney General; and Shaun A. Brown, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

At the defendant's trial, the state's evidence established that on September 13, 2000, the defendant and Joyce Howard lived near each other in the same apartment complex, where the defendant was employed as a maintenance technician. During the afternoon or early evening of that day, the two became involved in an argument on the grounds of the complex. During the argument, the defendant challenged Ms. Howard's boyfriend, Marvin Perry, to control his girlfriend. When Mr. Perry declined to intervene in the argument, the defendant challenged Mr. Perry's masculinity. The defendant then went inside his apartment and returned with a handgun, which both Ms. Howard and Mr. Perry saw. The defendant pointed the gun at Ms. Howard and Mr. Perry, cocked it, and told them to come around the corner so he could shoot them and get it over with. Ms. Howard and Mr.

Perry were frightened, and they went inside Ms. Howard's apartment and summoned the authorities.

After the police were notified, Ms. Howard and Mr. Perry went back outside to wait for the arrival of officers, as they had been instructed to do. Both Ms. Howard and Mr. Perry reported that at least one individual other than the defendant left the defendant's apartment prior to the arrival of the police. According to a law enforcement officer who testified, Ms. Howard reported on the scene that after the defendant went back inside his apartment, he handed the gun to another person and said, "You better take this. She's calling the cops on me."

When officers from the Jackson Police Department arrived minutes later, they found the two victims outside in an agitated state. The defendant was alone inside his apartment. The defendant was very evasive, and the officers had difficulty communicating with him. One officer described him as being "somewhat intoxicated." The defendant initially gave the officers a false name. The defendant consented to a search of his apartment. In the bedroom, an officer discovered a gun holster which was damp as if it were sweaty. The defendant was then arrested.

In an attempt to rebut the state's proof, the defendant took the stand during his case-in-chief. He categorically denied having threatened Ms. Howard and Mr. Perry with a gun, and he claimed that he did not even own a gun at the time of the offense. He testified that Ms. Howard had a history of antagonizing him. He admitted that he had exchanged words with Ms. Howard on the date in question, but he minimized his culpability in the situation. He denied that there had been any third party in or out of his apartment prior to the arrival of the police. He claimed that he had not given the police permission to search his apartment, and he denied knowing whether the gun holster they found was damp.

After the conclusion of proof, the jury considered the charges of attempted aggravated assault and possession of a weapon with intent to utilize it in an offense. On the first count, the jury returned a verdict of the lesser-included offense of misdemeanor assault. The jury found the defendant guilty of the charged offense on the second count. This appeal followed.

The defendant asks us to find fault in the conviction proceedings on the bases that (1) the jury reached inconsistent verdicts, and (2) the evidence is not sufficient to sustain the judgments.

First, with respect to the verdicts, we acknowledge that they might be viewed as inconsistent. The defendant was charged with attempted aggravated assault via use or employment of a weapon in the commission of the offense. *See* Tenn. Code Ann. § 39-13-102(a)(1)(B), (a)(2)(B) (1997). He was convicted of misdemeanor assault, which does not include weapon possession as an element of the offense. *See id.* § 39-13-101 (1997). The defendant was also charged with unlawful carrying or possession of a weapon with the intent to employ it in the commission of an offense. *See id.* § 39-17-1307 (1997). The defendant argues that his conviction of the latter cannot be reconciled with his acquittal of attempted aggravated assault and conviction of misdemeanor assault, inasmuch as the weapon-possession charge requires the jury to find that the defendant

possessed a weapon, whereas the misdemeanor assault conviction logically involved a contrary finding by the jury.

The rule in Tennessee is that consistency of verdicts on multiple-count indictments is not required. *Wiggins v. State*, 498 S.W.2d 92 (Tenn. 1973). Each count is treated as a separate indictment. *Id.* at 94. This is the case even when the jury's finding on one count necessarily negates the state's proof as to another count. *Id.* at 93. Thus, the verdicts will stand as returned provided that the proof of guilt on each count, considered separately, is sufficient to sustain a conviction. *Id.* at 94.

Based upon these principles, the verdicts in this case, to the extent that they are inconsistent, are not assailable for that reason alone. We therefore move on to consideration of the sufficiency of the convicting evidence.

When an accused challenges the sufficiency of the evidence, an appellate court's standard of review is whether, after considering the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Tenn. R. App. P. 13(e); *Jackson v. Virginia*, 443 U.S. 307, 324, 99 S. Ct. 2781, 2791-92 (1979); *State v. Duncan*, 698 S.W.2d 63, 67 (Tenn. 1985). This rule applies to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of direct and circumstantial evidence. *State v. Dykes*, 803 S.W.2d 250, 253 (Tenn. Crim. App. 1990), *overruled on other grounds by State v. Hooper*, 29 S.W.3d 1 (Tenn. 2000).

In determining the sufficiency of the evidence, this court should not reweigh or reevaluate the evidence. *State v. Matthews*, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Questions concerning the credibility of the witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact. *State v. Cabbage*, 571 S.W.2d 832, 835 (Tenn. 1978). Nor may this court substitute its inferences for those drawn by the trier of fact from the evidence. *Liakas v. State*, 199 Tenn. 298, 305, 286 S.W.2d 856, 859 (1956); *Farmer v. State*, 574 S.W.2d 49, 51 (Tenn. Crim. App. 1978). On the contrary, this court must afford the State of Tennessee the strongest legitimate view of the evidence contained in the record as well as all reasonable and legitimate inferences which may be drawn from the evidence. *Cabbage*, 571 S.W.2d at 835.

In count one of the indictment, the defendant was charged with attempted aggravated assault "by pointing a gun at [the victims] and demanding that they come outside and be shot." The defendant was convicted of misdemeanor assault, which in pertinent part is "[i]ntentionally or knowingly caus[ing] another to reasonably fear imminent bodily injury." Tenn. Code Ann. § 39-13-101(a)(2) (1997).

In count two of the indictment, the defendant was charged with unlawful carrying or possession of a weapon by possessing "a gun . . . with the intent to employ it in the commission of

Aggravated Assault.” In pertinent part, the statute proscribes “possess[ing] a deadly weapon with intent to employ it in the commission of or escape from an offense.” *Id.* § 39-17-1307(c)(1) (1997).

Viewing the evidence in the light most favorable to the state, the defendant possessed a handgun, which he pointed at the victims while he threatened to shoot them. These facts readily establish the defendant’s guilt of both of the crimes of which he was convicted. In so holding, we necessarily reject the defendant’s argument that his testimony is more credible than that of the two victims. As outlined above, the task of reweighing the evidence does not fall to this court as a function of our appellate review. Rather, we must leave undisturbed the credibility issues resolved by the finder of fact so long as there is evidence of record to support those determinations, as there is here.

We affirm the judgment of the trial court.

JAMES CURWOOD WITT, JR., JUDGE